

REMARKS

Applicant has carefully reviewed the office action mailed February 27, 2006 and offers the following remarks to accompany the above amendments.

Claims 1-24 have been amended to correct antecedent basis and make them more readable. No new matter has been added.

Claims 7-9, 19 and 24 have been objected to as being dependent upon a rejected base claim, but have been deemed allowable if rewritten in independent form. Applicant appreciates the identification of allowable subject matter, but in light of the remarks below believes that all pending claims 1-24 are allowable.

Claims 1-6, 10-18, and 20-23 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Kroll in view of Welin. Applicant respectfully traverses. To establish *prima facie* obviousness, the Patent Office must show where each and every element of the claim is taught or suggested in the combination of references. For the Patent Office to combine references in an obviousness rejection, the Patent Office must prove there is a suggestion to combine the references. For the Patent Office to prove that there is a suggestion to combine the references, the Patent Office must do two things. First, the Patent Office must state a motivation to combine the references, and second, the Patent Office must support the stated motivation with actual evidence. *In re Dembiczak*, 175 F.3d 994, 999 (Fed. Cir. 1999). MPEP § 2143.03. If the Patent Office cannot establish obviousness, the claims are allowable.

Applicant initially traverses the rejection because the Patent Office has not properly supported the proposed combination. The alleged motivation to combine the references is "to optimize the system in real time" (Office Action mailed February 27, 2006, p. 4). This alleged motivation is overly vague and broad and does not compel the combination; that is, one of ordinary skill in the art would not necessarily be compelled to look to Welin in order to optimize the system of Kroll in real time. There are other ways to optimize the system of Kroll in real time without looking to Welin. In fact, Kroll itself discloses real time adjustment of the size of a jitter buffer (see Kroll Abstract), so there would be no need to look to Welin for real time optimization. Since the alleged motivation does not compel the combination, the combination is improper and should be withdrawn.

In addition, the alleged motivation to combine is not supported by actual evidence. The Patent Office points to Welin, col. 18, lines 20-25 as the evidence supporting the proposed

motivation to combine. This passage states that a process based scheduling system takes into account the attributes of individual packets to fine-tune an optimum execution sequence, and in this way, adaptive scheduling adjusts itself to changing real time conditions. Applicant respectfully submits that a statement about how adaptive scheduling adjusts to real time conditions is not evidence that supports or suggests combining the Welin and Kroll references to reach the claimed invention. In particular, adaptive scheduling and real time conditions are not pertinent to a method of voice optimization in a packet switched network, comprising: initializing default parameters for end-point devices on a network with respect to choice of preferred CODEC, number of voice samples per packet, and jitter buffer size; measuring performance parameters of a network; and evaluating whether the measured performance parameters signify that a connection to the network is below a desired level of operation and, if so, adjusting the default parameters for the end-point devices based on the evaluating. This is especially true considering what Welin is cited for: initializing default parameters for end-point devices on a network with respect to choice of preferred CODEC, and number of voice samples per packet. The adaptive scheduling adjusting itself for real time conditions does not support combining Welin with Kroll for initializing default parameters for end point-devices. Since there is no actual evidence that supports the proposed motivation to combine, the motivation is improper. Since the motivation is improper, the combination is improper and should be withdrawn.

Even if the combination is proper, a point Applicant does not concede, the combination still does not teach each and every limitation of the claims. The Patent Office admits that Kroll does not teach initializing default parameters with respect to preferred CODEC and number of voice samples per packet, and cites Welin, col. 18, lines 4-14 to correct this deficiency of Kroll. Welin col. 18, lines 4-14 is reproduced below:

FIG. 1 further shows a Multi-Channel/Multi-Codec DSP telephony system on the TI TMS320C6201 platform to support DTMF, echo cancellation and multiple speech/modem coder functions. The selection of the coders suitably occurs at run-time. Multi-channel 8 KHz PCM data comes in simultaneously through the C6201's multi-channel serial port in a TDM fashion. The input data for each channel is separated from the input TDM data stream and saved to a circular buffer. The size of the circular buffer is at least as large as the least common multiple of all the frame sizes of the coders supported.

Based on a reading of the above passage, Welin fails to teach or suggest initializing default parameters for end-point devices on a network with respect to choice of number of voice samples per packet. There is no mention in the cited passage of the choice of the number of voice samples per packet, particularly with respect to initializing a default parameter for an end-point with respect to the number of voice samples per packet. Since Welin does not disclose the element for which it is cited and the Examiner has admitted Kroll does not teach the element, the combination does not teach the recited element. Therefore, claim 1 is allowable over Kroll and Welin, even if properly combined.

Moreover, Welin fails to teach or suggest initializing default parameters for end-point devices on a network with respect to choice of preferred CODEC. The cited passage of Welin does disclose the selection of coders suitably occurs at run time. However, this is not equivalent to initializing default parameters for end-point devices on a network with respect to choice of preferred CODEC and then later adjusting the default parameters based on the evaluation of whether measured performance parameters signify a connection to the network is below a desired level of operation, as is required by claim 1. Since Welin does not disclose the element for which it is cited and the Examiner has admitted Kroll does not teach the element, the combination does not teach the recited element. Therefore, claim 1 is allowable over Kroll and Welin, even if properly combined.

Claims 2-13 depend from claim 1 and are patentable for at least the same reasons set forth above with respect to claim 1.

Independent claims 14 and 20 include limitations that are the same or similar to those in claim 1 and are thus patentable for at least the same reasons set forth above with respect to claim 1. Claims 15-19 and 21-24 depend from claims 14 and 20, respectively, and are allowable over Kroll and Welin for at least the same reasons.

The proposed combination is improper because the alleged motivation to combine the references does not compel the combination and the alleged motivation to combine is not supported by actual evidence. Moreover, even if properly combined, the combination does not teach or suggest every element of the claimed invention, and therefore does not render the claimed invention obvious.

The present application is now in condition for allowance and such action is respectfully requested. The Examiner is encouraged to contact Applicant's representative regarding any remaining issues in an effort to expedite allowance and issuance of the present application.

Respectfully submitted,

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